

**BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI**

**COMPLAINT NO. CC006000000079317**

VIJAY SHARMA

..Complainant

Versus

SHETH DEVELOPERS PRIVATE LIMITED

..Respondent

MahaRERA Regn. No. P51700001729

**Coram:**

Hon'ble Shri Madhav Kulkarni.  
Adjudicating Officer, MahaRERA.

Appearance:

**Complainant:** Adv. Jalpa Sharma

**Respondents** :Adv. Bharti Hire

**O R D E R  
(Dated 08.03.2021)**

1. The complainant an allottee, who had booked a flat with the respondent / promoter seeks compensation.
2. Complainant has alleged that he booked flat no. 1003G in the building Sheth Avalon that is project of the respondent near Jupiter Hospital, Thane (West) vide agreement for sale dated 18.03.2016. Possession was promised in June, 2018. Respondent has not delivered possession till this date. Respondent received occupancy certificate after present complaint was filed i.e on 09.08.2019. By email dated 27.07.2018, complainant demanded cancellation of booking and refund of total consideration with taxes and interest. As per RERA record, possession date is December,

2020. Respondent charged various amounts for common amenities. Respondent has not provided the amenities. Respondent has failed to form society. The complainant therefore seeks refund of total consideration with taxes paid with interest. Complainant seeks Rs.50,000/- as compensation for mental harassment and Rs. 50,000/- as cost of this complaint. The actual amount paid by complainant is not mentioned and in fact necessary details are not found in online complaint but in written argument. In online complaint, complainant has alleged that he paid approx. Rs.9 lakh as bank interest from 01.07.2018. As per agreement for sale, the price agreed was Rs.1,43,58,000/-. The amount paid however, is not mentioned anywhere.

3. The complaint came up before Hon'ble Member on 16.07.2019. As the complainant was seeking refund of the amount paid, matter came to be transferred to AO, Mumbai. Roznama dated 25.09.2019 has not been uploaded. As per Roznama dated 14.10.2019, complainant was present. On behalf of respondent, it was submitted that copy of complaint was not received. Matter was adjourned for plea and written explanation by respondent to 15.11.2019. On that day respondent filed WE. Matter was adjourned for evidence to 18.12.2019. Thereafter it was adjourned for written arguments of complainant to 09.01.2020. Complainant filed written arguments. Matter was adjourned for final hearing to 11.02.2020. On that day respondent filed written arguments. On the request of both parties, matter was adjourned to 19.03.2020. However due to corona pandemic, hearing could not be taken up thereafter. Virtual hearing was taken on 01.10.2020. Respondent was absent. Matter was adjourned to 13.11.2020. On that day arguments for both parties were heard. As I am working at

Mumbai and Pune offices in alternative weeks and due to huge pendency in this office, this matter is being decided now.

4. In its reply, respondent alleged that the complaint is false. Complaint was filed to extort money from respondent. Respondent has received occupation certificate on 09.08.2019 that is before the date mentioned in RERA as 31.12.2020. Respondent is ready and willing to handover possession of the flat to complainant subject to clearance of all dues. Since agreement was executed, before RERA came into force, the complaint is not tenable and it is governed by MOFA. As per clause 81, all disputes have to be referred for arbitration. Respondent is entitled for reasonable extension of time under clause 33 on the agreement.
5. Respondent had commenced the construction as per plan, which was scheduled to complete by 30.06.2018. In the year 2014, 2016 and 2017, there was shortage of sand due to restriction imposed by NGT. This fact was published in the newspapers. There was labour shortage. There was heavy rainfall in June, July, August, 2016, 2017 and 2018. By letter dated 25.05.2015, complainant changed booking from flat no. 803 in H wing.to flat no. 1003 in G wing. If the complainant cancels the booking, he is liable to pay forfeiture amount. Under clause 33, interest is payable on demand. Complainant never demanded interest. Complainant is not entitled to any compensation. If prayer is allowed, respondent will suffer loss. The complaint therefore, deserves to be dismissed.
6. Following points arise for my determination. I have noted my findings against them for the reasons stated below:
- 7.

POINTS	FINDINGS
1 Is the complainant allottee and respondent promoter?	Affirmative
2 If yes, has the respondent failed to deliver possession as per agreement, without there being circumstances beyond his control?	Affirmative
3 Is the complainant entitled to the reliefs claimed?	Affirmative
4 What Order?	As per Final Order.

### REASONS

7. **Point Nos. 1 to 3 -** At the outset, we will have to see what the law laid down by the Hon'ble Bombay High Court is, regarding the jurisdiction of the Adjudicating Officer appointed u/s 71 of Real Estate Regulations and Development Act. (Henceforth, RERA). Section 71 reads as follows:
- 1) For the purpose of adjudging compensation, u/s 12, 14, 18 and 19, the authority shall appoint in consultation with appropriate government, one or more judicial officer as deemed necessary who is or has been a District Judge, to be an Adjudicating Officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard. Provided that any person whose complaint in respect of matter covered u/s 12, 14, 18 and 19 is pending before consumer disputes redressal forum or the consumer disputes redressal commission or the national consumer redressal commission established u/s 9 of Consumer Protection Act on or before commencement of this Act, he may with the permission of such forum or commission as the case may be, withdraw the complaint, pending before it and file an application for adjudging compensation. Under sub section 1, Complaint shall be dealt

with by Adjudicating Officer as expeditiously as possible and dispose of the same within a period of 60 days from the date of the application.

2) Provided that if any such application could not be disposed of within said period of 60 days, the AO shall record his reasons in writing for not disposing of the application within that period.

3) While holding an inquiry, AO shall have power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case, to give evidence or to produce any document which in the opinion of Adjudicating Officer, may be useful for or relevant to the subject matter of inquiry and if in inquiry he is satisfied that person has failed to comply with provisions of any of the sections specified in sub-Section 1, he may direct to pay such compensation or interest as the case may be, as he deems fit in accordance with the provisions of any of those sections.

8. Section 72 reads that while adjudging the quantum of compensation, or interest as the case may be u/s 71, the AO shall have due regard to the following factors viz.

(a) The amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default;

(b) The amount of loss caused as result of the default;

(c) The repetitive nature of the default;

(d) Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

9. Section 31 provides for fling of complaints with the authority or the adjudicating officer:

(1) Any aggrieved person may file a complaint with the authority or the AO as the case may be for any violation or contravention of the provisions of this Act or Rules and Regulations made thereunder against any promoter or an allottee or real estate agent as the case may be.

(2) The form, manner and fees for filing complaint, under sub-section 1 shall be such as may be prescribed

10. Section 12 provides for awarding compensation where any person makes an advance on the basis of information contained in advertisement etc. and sustains loss or damage by reason of incorrect/ false statement.

Under the proviso, if the person affected, intends to withdraw from the proposed project, he shall be returned his entire investment alongwith interest at such rate as may be prescribed and compensation, in the manner provided under the Act.

11. Section 14 provides for adherence to sanctioned plans and project specifications by the promoter and no alterations can be made without previous consent of that person except minor additions and alterations. Any other alterations and additions, are not permissible, without written consent of at least 2/3 rd of allottees other than promoter. Under Sub-section 3 in case of structural defects etc. ,if it is brought to the notice of promoter, within a period of 5 years, by the allottee, from the date of handing over possession, it shall be duty of promoter to rectify such defects without further charge within 30 days and in the event of promoters failure to rectify, such defects, within such time, aggrieved allottee is entitled to receive appropriate compensation in the manner as provided under this Act.

12. Under Section 18 (1), if the promoter fails, to complete or is unable to give possession of an apartment, plot or building,

(a) In accordance with terms of agreement for sale or as the case may be duly completed by the date specified there in or

(b) due to dis-continuance of his business as a developer, on account of suspension, or revocation of registration, under this Act, or for any other reason, he shall be liable on demand, to the allottee in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to refund the amount received by him in respect of the apartment, etc. with interest at such rate as may be prescribed in this behalf including compensation in the manner provided under this Act. Under the proviso, if allottee does not intend to withdraw, he shall be paid, interest for every month of delay, at such rate as may be prescribed. Under sub-section 2 promoter shall compensate allottee in case of any loss caused due to defective title to the land. Under Sub- section 3 if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

13. Section 19, provides for rights and duties of the allottee and under Sub-section 4 he shall be entitled to claim refund, with interest and compensation, if promoter fails to comply or is unable to give possession of apartment etc. in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of registration under the provisions of this Act.

14. Hon'ble Appellate Tribunal, has taken a view in the matter of Pankaj Agarwal that adjudicating officer has no jurisdiction to grant refund of the amount with interest and has power only to grant compensation and that jurisdiction vests only with the authority.
15. However, observations of Hon'ble Bombay High Court will have to be seen. In the case of Lavasa Corporation Ltd., Vs. Jitendra Tulsiani, in 2nd appeal, 9717 of 2018 with Civil Application No. 683 of 2018, in para 76 Hon'ble High Court has observed as follows :

Moreover, if the Appellant is permitted to raise such defence, it would be as good as allowing Adjudicating Authority established under RERA, to go behind the registration certificate for holding that said registration under RERA, is not applicable to the project of the appellant. Can the Adjudicating Authority, do so? The answer has to be in the negative, if the scheme of RERA, is considered. It is pertinent to note that under RERA, there are two different authorities established; one is real estate regulatory authority defined u/s 2 (1) and established u/s 20 of the RERA. It is conferred with the jurisdiction to entertain the application, for registration of the projects. As can be seen from, provisions Section 3 and 4 of "RERA, application for registration of real estate project is to be made to real estate regulatory authority established under chapter 5 which deals with establishment and incorporation of the authority.....

As per para 77- "as against it, the adjudicating authority under the RERA is defined, in Section 2(a) as Adjudicating Officer appointed under sub-section 1 of Section 71. This Adjudicating Authority as can be seen from Section 71(1) of the Act is established for the purpose of adjudging compensation under Section 12, 14, 18 and 19 of the said Act.



Section 31 provides that the complaints are to be filed by aggrieved persons under RERA with the AA for any violation or contravention of the provisions of this Act.

As per para 78- therefore, the authority which grants registration under RERA is different than the authority which is established to adjudicate the grievances of the aggrieved persons under the said Act. One authority cannot encroach on the jurisdiction exercised or to be exercised by another authority. Here in the case, the registration certificate to the appellant is granted by the Regulatory Authority, established u/s 20 of the said Act and now the appellant is calling upon the AA established u/s 71 of the RERA to go behind registration certificate and to hold that provisions of RERA are not applicable to the appellant.

Hon'ble High Court framed point no. 2 as- whether Appellate Tribunal has committed an error in holding that AA under RERA has jurisdiction to entertain the complaints filed by respondent u/s 18 of the RERA?

Point no. 3 was framed as- whether Adjudicating Authority under RERA can go behind registration certificate of the appellant so as to hold that it has no jurisdiction, though the project is registered under the said Act? Hon'ble High Court answered point no. 2 and 3 in the negative. In para 62, reference is made to Judgement of Hon'ble Apex Court in the case of TELCO Vs. State (2000)5 SCC 346 about the interpretation of enactment viz. that which will achieve the object of the Act.

16. Then there is landmark judgement of Division Bench of Hon'ble Bombay High Court in the case of Neelkamal Realtors Vs. Union of India, Writ Petition no.2737 of 2017 dated 06.12.2017. The validity of almost whole of

the RERA was scrutinised by the Hon'ble Bench. Except the provision u/s 46 (1)(b), all other provisions have been upheld.

The discussion on jurisdiction of Adjudicating Officer by Hon'ble Justice N.H.Patil, starts from paragraph 124. It reads – the entire scheme of RERA is required to be kept in mind. It is already submitted during the course of hearing that in many cases, helpless allottees had approached the consumer forum, High Court, Apex Court. In a given fact situation of the case, the courts have been passing orders by moulding reliefs by granting interest, compensation to the allottees and issuing the directions for the timely completion of the project, transit accommodation during completion of project, so on and so forth. Under the RERA, now this function is assigned to the Authority, Tribunal. An Appeal lies to the High Court. Under one umbrella, under one regulation and under one law, all the issues are tried to be resolved. Provisions of Section 71 refer to power to adjudicate. District Judge is conferred with power to adjudicate compensation u/s 12, 14, 18 and 19. A promoter could very well put up his case before the adjudicator who deals with the issues in the light of the fact situation of each case. Therefore, there should not be any apprehension that mechanically compensation would be awarded against a promoter on failure to complete the development work.

The proviso to section 71(1) provides that any person whose complaint in respect of matters covered under sections 12,14,18 and 19, is pending before consumer disputes redressal forum, or consumer disputes redressal commission or the national consumer redressal commission, established under Section 9 of Consumer Protection Act, on or before commencement of this Act , he may with the permission of such forum or

commission as the case may be withdraw the complaint pending before it and file an application before the AO under this Act.

Para 125 reads that- the proviso to Section 71(1) as quoted above, is a clear indicator that even pending complaint, before consumer forum could be transferred to adjudicator under RERA. A submission was advanced that allottee is free to approach whatever forum in respect of defaults committed if any, in compliance with agreement for sale entered into between the promoter and allottee prior to registration of RERA. In view of scheme of RERA we find that this contention of Petitioners cannot be upheld. It would be unreasonable to expect allottee to resort the proceedings in different forums prior to registration of project in respect of the agreement executed prior to the registration under RERA and post registration. Under the scheme of RERA, the adjudicatory mechanism is prescribed under one umbrella. We do not notice any illegality in the same.

Section 71(1) is framed in the larger interest of consumers. The adjudicator who would be a judicial member of the rank of district judge would be dealing with all issues and the pleas raised by promoter, allottee and other stake holders before adjudicating claim for compensation. The orders are subject to judicial review by higher forum. Therefore, promoter should have no apprehension that they would be remediless or there is no scope under scheme of RERA for consideration of their claim.

Para 126 reads - another plea, raised is, as to why a promoter shall pay interest for the past contractual rights, in case of failure, to complete the project after registration under RERA, till possession is handed over. Under the scheme of RERA, it is clear by now that a promoter has to self-assess

and declare time period during which he would complete the project. But in case, in spite of making genuine efforts, a promoter fails to complete the project, which the concerned authority, adjudicator, forums, tribunal would certainly look in to genuine cases and mould their reliefs accordingly. We do not find that on that count provisions of Section 18(1)(a) are to be declared as contrary and violative of Article 14, 19(g) ..... The payment of interest u/s 18 is compensatory in nature.

The provisions of Section 18 must be read with Sections 71 and 72. The adjudicator would consider each case on its merits and unless such cases emerge and decisions are taken by authority, it would not be appropriate at this stage to hypothetically consider a situation and decide constitutional validity of statutory provisions.

Para 127 reads - it was submitted on behalf of Union of India that MOFA provides for interest to be paid in certain cases (Section 8) and constitutional courts too had granted interest to flat purchaser in case of defaults by the promoter. The requirement to pay interest u/s 18 is not penal since payment of interest is compensatory in nature due to delay suffered by the flat purchaser.....

17. Hon'ble Justice Ketkar in para 264 has observed as- so far as challenge to Section 59, 60, 61, 63, 64 are concerned, these provisions fall in chapter VIII entitling offences, penalties, and adjudication..... Payment of interest and compensation, u/s 12, 14, 18 and 19 needs to be adjudicated by AO as per Section 71. The amount of interest and compensation is payable by the promoter to the allottee or by allottee to the promoter u/s 19 (7). As against this under Section 76 the sums realised by way of penalties imposed by appellate tribunal or the authority in the union territories, are to be credited

to the consolidated fund..... Section 76 does not include determination of AO u/s 71 of RERA. This is also a pointer to indicate that the interest and compensation determined by AO u/s 12, 14, 18 and 19 is not by way of penalty but is essentially compensatory in nature.

18. In my humble opinion the scope of compensation can not be restricted, if provision of Sec.72 of RERA is considered. There is no special provision empowering the authority to award refund but there are general powers u/s.37 &38. The word compensation is not defined in RERA. In general terms it would mean making good loss suffered due to financial stress, physical stress or mental stress. Wording used in sec.12 is returning investment. Wording used in sec. 18 is amount received ...including compensation. When the authority transfers a complaint to A.O. for determination of compensation considering the prayer clause, the A.O. must determine compensation and can not simply dismiss the complaint.

19. In my humble opinion as laid down by Hon'ble Bombay High Court in the Lavasa case and Neelkamal case, the main functions of the authority are to register real estate project and to extend the registration or otherwise, encourage timely completion of real estate projects and to inflict penalty in case of default in compliance of the provisions of this enactment. The AO on the other hand is to lessen the burden of the authority in awarding compensation in case of default under the provisions of the enactment. Therefore, Section 31 permits aggrieved person, by violation or contravention of provisions of this Act or Rules and Regulations made thereunder, to file a complaint with the authority or the AO. The complaint for compensation u/s 12, 14, 18 and 19 can be directly filed with the AO in case of violation or contravention of the provisions of the Act, rules and

regulations. Section 72 clause b mandates the amount of loss caused as a result of the default, as a factor to be considered while adjudging quantum of compensation or interest by AO. Sub-clause c mandates considering the repetitive nature of the default. In my humble opinion the amount that the allottee pays to the promoter is the loss suffered in the event of default by promoter which can be awarded by the AO with interest. Awarding interest is also provided under Section 71 sub-section 3. The default of the promoter will be repeated everyday till the allottee receives either possession and amenities as per promise or gets back the amounts paid by him. The only question appears to be one of nomenclature and there is no legal bar to award compensation by AO u/s 72 sub-section a to d.

20.The complainant has placed on record, copy of agreement dated 18.03.2016 which only shows date for delivery of possession . As per extract of Index II register flat no. 1003 in G bldg., in the project Sheth Avalon at Thane was agreed to be sold by respondent to complainant and his wife on 18.03.2016 for a consideration of Rs.1,43,58,000/-. Respondent is not denying execution of agreement, I therefore, answer point no. 1 in the affirmative.

21.As per clause no. 33 of the agreement, developer was to handover possession on June, 2018. Usual circumstances beyond the control of the respondent are mentioned, under which respondent was entitled for extension of time for delivery of possession. Now it is the contention of the respondent that since agreement was executed prior to coming into force of RERA, this complaint is not tenable. Now it is well settled that the Act is applicable to all projects which had not received OC on the date on which RERA came into force. Such projects are required to be registered with the

authority. Accordingly, respondent has registered the project with the authority. It is also been settled that Arbitration clause will not be override the proceeding under RERA. Respondent has also alleged that he received occupation certificate on 09.08.2019. I will be coming to this aspect a little later.

22.The main thrust of the defence is that in the year 2014, 2016 and 2017 there was shortage of sand due to order passed by NGT. There was labour shortage. There was effect of demonetization and there was heavy rainfall in the months of June, July and August.

23.The paper cutting of Hindustan Times dated 22.05.2015 reads that Maharashtra lifts sand mining ban on coast imposed by Green body . Then an article dated 07.02.2017 showing that Maharashtra Govt. to act against illegal sand mining in Raigad. Then there are articles of heavy rain falls in Mumbai.

24.Respondent has uploaded letter of the complainant dated 25.05.2015 about changing the flat allotment from H-803 to G-1003. It means that complainant had booked flat no. H-803 before 25.05.2015. There is acceptance on the part of the respondent by letter dated 30.05.2016. Accordingly, all documents were to be amended. The agreement was executed on 18.03.2016 and date for possession was agreed at 30.06.2018. It is the grievance of the respondent that there was heavy rain fall in June, July, August in 2016, 2017 and 2018 in this area. It is well known that there is heavy rainfall in Mumbai and Konkan area in the rainy season. Heavy rain fall was a fact within knowledge of the respondent while giving the date of possession. Likewise ban on illegal sand mining and its lifting was well within the knowledge of the respondent while giving the date for possession. Again there was ban on illegal sand mining and not on legal

business. After accepting consideration amount from allottees, respondent was bound to tap all the resources for building material. These excuses therefore, cannot be accepted.

25. Respondent has alleged that due to demonetization, there was labour shortage as labour left for native places. It is well known that labour in construction industry in this area mainly comes from northern states. Demonetization was effected in November, 2016. This resulted in cash crunch for many entrepreneurs. Because of this reason, there was no money for paying wages for months together. This is a circumstance which was beyond the control of the respondent and beyond the anticipation by respondent. The tremors of demonetization lasted for about 6 months. If we add these 6 months, the date of possession will come to 31.12.2018. Respondent did not offer possession at the beginning of the year 2019.

26. It is well settled that a promoter cannot unilaterally, extend the date for delivery of possession. The date for delivery of possession given while registering the project with the authority is not binding on the allottee and terms of agreement will prevail. Complainant sent mail on 14.12.2018 seeking meeting with owner of the respondent and enquiring what amount he will be getting, if he surrenders flat due to delay on the part of the respondent. Earlier on 27.07.2018 the complainant expressed willingness to surrender flat and claimed refund with 9%-10% interest. Respondent got the OC on 09.08.2019 that is 7 months after 31.12.2018. This delay in my opinion is not justified, especially when complainant expressed willingness to withdraw from the project and claimed back his amount. It was for the respondent to arrive at a settlement in that respect. Complainant was expressing desire to withdraw in 2018. Respondent kept quiet. I have



already held that due to demonetization respondent was entitled for extension by 6 months. Since further delay is not satisfactorily explained, I answer point no. 2 in the affirmative.

27. The complainant failed to give exact amount paid by him nor any evidence is adduced. Respondent admits having received Rs.1.32 cr. Respondent claims that Rs.31 lakhs are due from complainant. Therefore, complainant will be entitled to refund of Rs.1.32 lakhs together with interest as per Rule 18 of Maharashtra Rules. Towards mental harassment, complainant will be entitled for Rs.50,000/- and towards costs of this complaint, complainant will be entitled to Rs.20,000/-. It therefore answer point no.3 in the affirmative and proceed to pass following order :

### **ORDER**

- 1) Respondent is directed to pay to the complainant Rs.1.32 cr. together with interest at the rate of 10.40% p.a. from date of payments till final realisation u/s 71(3) and 72(b) and (c) of RERA.
- 2) Respondent to pay to complainant Rs.50,000/- towards mental harassment suffered u/s 72(d) of RERA
- 3) Respondent to pay to complainant Rs.20,000/- towards costs of the complaint. u/s 72(d) of RERA.
- 4) Respondent to pay above amounts within 30 days from the date of this order.

5) Complainant to execute cancellation deed at the cost of the respondent.

**Mumbai**  
**Date : 08.03.2021**

Madhav  
Vitthal  
Kulkarni  
**(Madhav Kulkarni)**  
**Adjudicating Officer**  
**MahaRERA**

Digitally signed by  
Madhav Vitthal Kulkarni  
Date: 2021.03.12  
11:23:30 +05'30'